



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-128

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

a. The rule repeals and recreates an entire chapter. The Wisconsin Bill Drafting Manual, 2005-2006, prepared by the Legislative Reference Bureau, says this:

Repealing and recreating generally obscures the nature and extent of changes in the law. However, there are three instances in which repealing and recreating may be appropriate: when there are so many changes that the text is almost unreadable because of extensive striking and underscoring, when the legislature intends to supersede a supreme court order..., and when an intervening change will affect a provision that has been affected by a delayed change.... [s. 4.105 (2), Bill Drafting Manual.]

None of these conditions applies in this case. A cursory side-by-side comparison of the current and proposed chapters suggests that relatively few changes are being made to the existing rule, certainly not enough as to make the rule unreadable if drafted with striking and underscoring; the second condition does not apply to rules; and the third condition would apply only with respect to individual provisions, not an entire chapter. The rule should be drafted to show the precise changes it makes to current law, through the creation, amendment, and repeal of text.

b. The extensive reproduction of statutory information in notes makes the rule somewhat hard to read. This is compounded by the need for extensive notes explaining the

relationship between this chapter and the NR 700 series. We recognize that, in implementing a statute that contains a great deal of detail, it is impossible to write a rule that is complete and self-contained without duplicating a lot of that statutory language. However, for ease of reading, the department may want to consider integrating that language into the text of this proposed rule.

c. The second sentence of the definition of “dry store” should be incorporated into the first: “... for dry cleaning activities, but where dry cleaning does not occur.”

d. The term “program year” is not used except in the definition of the term itself. This definition should be omitted.

e. The meaning of the term “receptors,” used in s. NR 169.05 (27) (e), is not intuitive and so the term should be defined. This could be done by reference to s. NR 700.03 (47).

f. Notes should be explanatory only, and should not contain substantive requirements. It appears that the first sentence of the note following s. NR 169.09 (2) (e) 3. is a substantive requirement. If so, it should be incorporated into the text. If it is a restatement of a requirement created in another provision of law, that provision should be cited in the note. The note following s. NR 169.11 (1) (a) 6. also appears to be substantive, unless it can be explained by cross reference, as is done in the note following subd. 1.

g. Several notes (e.g., the note following s. NR 169.11 (1) (b) 2.) refer to activities begun before October 14, 1997. If there are projects from that time that are still active, the material in the notes should be incorporated in the text of the rule; otherwise, it appears that material could be omitted altogether.

h. Section NR 169.11 (1) (b) 5. should identify by cross-reference the interim action detail and cost information to which it refers.

i. Section NR 169.11 (1) (b) 8. does not follow from the introductory language. That paragraph lists obligations of an applicant, not of the department. The provision should be moved to a more appropriate location in the rule, such as s. NR 169.17. The same applies to par. (c) 8.

j. The first note following s. NR 169.11 (1) (c) 11. appears to be a substantive requirement that should be incorporated into the text of the rule.

k. The note following s. NR 169.13 (3) (a) 4. identifies items that are not ineligible costs. First, this is a substantive provision that should be in the text of the rule. Second, the costs should be listed as eligible costs in s. NR 169.13 (2) to avoid the double negative of an exception to ineligible costs.

l. Section NR 169.23 (3) (d) 7. does not follow from the introduction. It should be made a separate paragraph.

m. Section NR 169.23 (9) (b) 1. d. should be written as a full sentence, as are the preceding subdivision paragraphs. Also, although a full sentence, subd. par. e. does not follow

logically from the introduction. It should either be rewritten in the form of the preceding subdivision paragraphs or renumbered as a separate subdivision.

- n. The first word of s. NR 169.27 (1) should be “An” rather than “The.”
- o. Section NR 169.27 (2) (a) should identify what laws supercede that paragraph, rather than vaguely stating “Except as otherwise provided by law....”
- p. The first sentence of s. NR 169.27 (2) (b) should refer to “this subsection” rather than “this section.”
- q. Sections NR 169.27 (4) (a) and (b) should be written in the active voice, as is par. (c):
 - (a) The department may terminate
 - (b) The department may declare

There are many other provisions of the rule, not individually noted in this report, that would be improved by the use of the active voice.

4. Adequacy of References to Related Statutes, Rules and Forms

a. There are numerous references to application forms in s. NR 169.19 (2), but no clear note indicating how applicants can obtain the forms. If the note following par. (k) is intended for this purpose, it should be placed in a more logical place, to help readers find it. The same problem is found in s. NR 169.23 (5) (b) and (6) (intro.).

- b. Section NR 169.27 (4) (a) should refer to sub. (3) (b), rather than all of sub. (3).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the third line of the first paragraph of the analysis, “are” should replace the first “under.”

b. Section NR 169.09 (2) (b) ***appears*** to say that only the activities identified in s. NR 169.05 (27) are permissible site investigation and scoping activities, and that all other site investigation and scoping activities are prohibited. What it most likely intends is that ***reimbursement of costs is allowed*** only for the listed site investigation and scoping activities. This should be clarified. Also, in the preceding paragraph, it appears that the word “or” should be inserted between “site investigation” and “scoping.”

c. Numerous notes (e.g., the note following s. NR 169.11 (1) (a) 4.) indicate that forms “will be” available. This should be written in the present tense.

- d. The semicolons in s. NR 169.13 (2) (b) should be replaced by commas.

e. Section NR 169.19 (2) (j) is imprecise: Whose W-9? And for what year?

f. In the second sentence of the note following s. NR 169.19 (4) (d), the word “application” should be written in plural.

g. Section NR 169.23 (6) does not make sense as written. In the introduction, it appears that “of the following,” should be inserted after “all.”

h. The words “or entity” should be omitted from s. NR 169.29 (2) (a), since the definition of “person” in s. 990.01 (26) is broad enough to include entities.